



CHILLICOTHE

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CITY COUNCIL

CITY OF CHILLICOTHE, OHIO 45601 ★ ADMINISTRATION BLDG., 35 SOUTH PAINT ST. ★ PHONE (614) 774-1185 ★ FAX (614) 773-8004

November 21, 1997

Federal Communications Commission
ATTN: William Kennard, Chairman Designate
1919 M Street, NW
Washington D.C., 20554

Ex Parte Letter Re: Cases WT97-197, MM Docket 97-182, and DA 96-2140

Dear Chairman Kennard:

The Council of the City of Chillicothe, Ohio, during the regular meeting conducted November 10, 1997, upon motion duly made and seconded, unanimously passed a Resolution authorizing and directing me, as Clerk of Council, to send this letter to you to convey the Council's request that you please terminate, immediately, all action in the above-referenced cases. These cases attempt to make the Federal Communications Commission what is essentially a "Federal Zoning Commission" for cellular and broadcast towers. The Council of the City of Chillicothe, Ohio, takes the position that this would amount to a usurpation of the local police power and clearly violate the intent of Congress, the Constitution of the United States of America, and all principles of Federalism upon which our nation was founded.

Congress and the judiciary branch of our government have long recognized that zoning matters are peculiarly local in nature. The FCC has absolutely no knowledge or expertise in zoning matters, and certainly is not accessible to most citizens, particularly the local constituents who are directly affected by zoning decisions. For these and many other valid reasons, Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act. In direct contravention of this, the FCC is now trying to do an end run by claiming jurisdiction through the issuance of rules that improperly infringe upon the lawful jurisdiction of local zoning authorities.

The efforts of the FCC to claim jurisdiction over any local zoning matter where RF radiation is mentioned is totally unacceptable. This ignores the fact that a municipality such as the City of Chillicothe, Ohio, and the city's duly elected and appointed officials, cannot censor or control the statements made by our citizens during the public meetings of the Council of the City of Chillicothe, Ohio, or public hearings conducted before the local zoning board or the Chillicothe

Planning Commission. As you very well know, we cherish the right of our local citizens to come before our legislative body to express their opinions and speak their minds on any topic they wish, and this right is preserved inviolate under the First Amendment to the Constitution of the United States of America. The Council of the City of Chillicothe, Ohio, encourages the local citizens to speak on matters of concern to them, regardless of whether these matters are on the Council's official meeting agenda. The Council of the City of Chillicothe, Ohio, has had its regular meetings broadcast live for over thirty years now on the local cable television station, and the Rules of Council make specific provision to permit audience participation during those meetings as part of the normal order of business. This is part of what local government is all about.

President Bill Clinton selected the City of Chillicothe as the place for him to visit and conduct the very first "town meeting" after he took office in January of 1993. In doing so, President Clinton demonstrated his appreciation of the fact that ours truly is a government of the people, by the people and for the people, and that the assemblages of the local citizens where freedom of expression reigns paramount make up the bedrock of our form of democracy.

Some of our citizens here in Chillicothe, Ohio, may have concerns about the possibility of radiation from cellular towers. For the reasons just discussed, the Council of the City of Chillicothe, Ohio, cannot and will not preclude them from mentioning these concerns to the members of Council. It is shocking to think that an agency of the federal government such as the FCC would use or even attempt to use these open expressions of concerns by citizens to their elected representatives as a means to explain or justify the efforts of the FCC to seize zoning authority and to reverse local zoning decisions. This violates and even threatens the most basic principles of Federalism, Freedom of Speech, and the rights of our citizens to assemble and to petition their government.

This is particularly true where a municipality, such as the City of Chillicothe, Ohio, expressly states that it will comply with the 1996 Act and that no consideration will be given to such statements (that go beyond the radiation authority Congress left with municipalities), and all decisions are completely valid on other grounds, such as the impact of the tower on property values or aesthetics. For similar reasons, the FCC should not be permitted to "second guess" the reasons that exist for a particular decision of a municipality. The FCC ought to be bound by the stated reasons given by a municipality, much the same as the courts are bound by those stated reasons which are entitled to a presumption of validity. The reasons stated by the municipality for a particular decision are either sufficient to uphold the decision, or not, and the FCC should not presume to have the omniscience to discern alternative but unstated "true reasons" behind a decision, any more than the courts should be permitted to "second guess" the unstated but "true reasons" for decisions of the Federal Communications Commission.

In like manner, the Council of the City of Chillicothe, Ohio, takes the position that the proposal of the FCC to ban moratoria on the installation of new cellular towers is also objectionable for many of the very same reasons as discussed above. This proposal fails to recognize that for many municipalities, such as the City of Chillicothe, Ohio, moratoria are a well recognized zoning tool, especially while in the process of making necessary and fair and responsible revisions to zoning ordinances to reflect our changing times and technology. Most importantly, however, is the fact that the elected representatives of the people of the United States through the Congress have already taken away the authority of the FCC to exercise control over zoning of cellular towers, and this includes moratoria.

Similarly, the Council of the City of Chillicothe, Ohio, asks that you terminate the FCC's proposed rulemaking that purports to preempt local zoning of broadcast towers. As you very well know, broadcast towers can exceed 2000 feet in height and are among the tallest structures known to mankind. Presently, the tallest building in downtown Chillicothe, Ohio, is about four stories and the tallest building within the city limits is about seven stories. It is therefore astounding that you would propose that the City of Chillicothe cannot consider the impact of a tower that could approach 200 stories in height on property values, the local environment, or aesthetic considerations that make our community attractive; and that even considerations of safety take second place. Under the police power reserved to the states and local subdivisions, safety must always be the first priority.

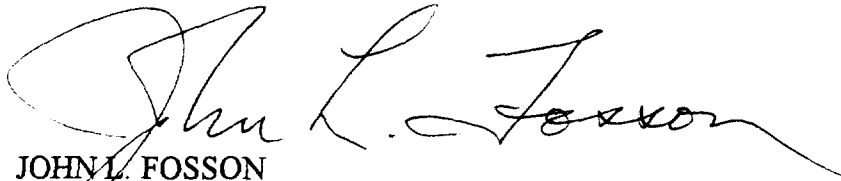
There is no useful purpose served by the establishment of artificial, arbitrary time limits for municipalities to act upon environmental, zoning and building permit approvals for such towers. The placement of such time limits upon action by local authorities, coupled with the statement that applications are automatically deemed granted if the time requirements are not met, amounts to a further violation of the U. S. Constitution, the Communications Act, and the principles of Federalism. This is particularly so where the application is incomplete or violates state or local law. By analogy, perhaps you should consider how the FCC might react if Congress enacted legislation stating that any application for a broadcast license would be deemed automatically to be granted unless acted upon within 21 to 45 days by the FCC, regardless of whether the application is complete or whether the applicant is foreign or domestically owned or otherwise qualified, or even whether the frequencies were available. Suppose further that this rule applied within regard to whether the station's tower is proposed to be located at the end of an airport runway, in a wetland preserve, or in the downtown historic district of the first capital of the State of Ohio, i.e. Chillicothe.

For these reasons the proposed actions all violate the Communications Act and the Constitution, and threaten the "town meeting" approach to government so appropriately encouraged by

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President Clinton during the past five years. Please terminate all these proceedings without taking the action proposed therein.

Yours very truly,

A handwritten signature in black ink, appearing to read "John L. Fosson". The signature is fluid and cursive, with a large initial "J" and "F".

JOHN L. FOSSON

CLERK OF THE COUNCIL OF THE CITY OF CHILLICOTHE, OHIO

cc: President Bill Clinton
Mr. William F. Caton, Acting Secretary, FCC (6 copies)
[Also see attached]

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